

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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|                             |   |                    |
|-----------------------------|---|--------------------|
| PEARSON EDUCATION, INC. AND | : |                    |
| JOHN WILEY & SONS, INC.,    | : |                    |
|                             | : |                    |
| Plaintiffs,                 | : |                    |
|                             | : |                    |
| -against-                   | : | 08 Civ. 6803 (DLC) |
|                             | : | ECF Case           |
| JOHN DOE D/B/A SHARP BOOKS  | : |                    |
| AND JOHN DOES NOS. 1-5,     | : |                    |
|                             | : |                    |
| Defendants.                 | : |                    |

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DECLARATION OF WILLIAM DUNNEGAN IN SUPPORT  
OF PLAINTIFFS' APPLICATION FOR AN ORDER  
ALLOWING SERVICE BY E-MAIL ON DEFENDANT  
JOHN DOE D/B/A SHARP BOOKS AND ALLOWING  
SERVICE OF SUBPOENAS ON ABEBOOKS INC.,  
PAYPAL, INC. AND GOOGLE INC.

WILLIAM DUNNEGAN hereby declares pursuant to 28  
U.S.C. § 1746 that the following is true and correct.

1. I am a member of the bar of this Court and  
the firm of Dunnegan LLC, attorneys for plaintiffs in this  
action, which was filed on July 30, 2008.

2. I am making this declaration in support of  
plaintiffs' application for an order authorizing plaintiffs  
(i) pursuant to Rule 4(e)(1) of the Federal Rules of Civil  
Procedure and New York CPLR § 308(5), to serve defendant  
John Doe d/b/a Sharp Books ("Sharp Books") with the summons  
and complaint in this action by e-mail, and (ii) pursuant

to Rule 26(d) of the Federal Rules of Civil Procedure, to serve subpoenas on Abebooks Inc. ("Abebooks"), PayPal, Inc. ("PayPal") and Google Inc. ("Google") to identify Sharp Books.

3. Under Rule 4(e)(1), the Court has authority to permit service on an individual defendant located in the United States by any means available under the laws of the State in which the Court sits. Under CPLR § 308(5), a plaintiff may accomplish service in any manner that the Court directs, if service is not practical under CPLR § 308 (1), (2) or (4). See D.R.I. Inc. v. Dennis, 2004 U.S. Dist. LEXIS 22541 (S.D.N.Y. 2004) (Leisure, J.); See generally Rio Properties, Inc. v. Rio International Interlink, 284 F.3d 1007 (9th Cir. 2002) (Affirming lower court's decision permitting service on foreign defendant via e-mail).

4. In this case, neither service nor substitute service under CPLR § 308 (1), (2), or (4) is feasible.

5. The complaint alleges that defendants have sold electronic copies of plaintiffs' copyrighted instructors solutions manuals through online sales at [www.abebooks.com](http://www.abebooks.com) using the username "Sharp Books".

6. We have been, by searching the Internet, unable to locate a physical address for Sharp Books.

7. Due to the electronic nature of the Sharp Books' business, we seek an order authorizing us to serve Sharp Books using the e-mail address used in processing his or her sales, Sharpbooks@gmail.com.

8. While we would usually also want to mail service of process to the last known address of the defendant, we have not been able to obtain any address for Sharp Books.

8. Under these circumstances, service to these e-mail addresses is reasonably calculated to give notice to Sharp Books, and much more likely to give actual notice of the action than service by publication.

9. Other judges of this Court have granted similar applications to serve a defendant by e-mail. A copy of the order of Judge Lynch in the action entitled Pearson Education, Inc., et al. v. Manohar Marimuthu, et al., 07 Civ. 6914, is attached as Exhibit A. A copy of the order of Judge McMahon in the action entitled Pearson Education, Inc., et al. v. John Doe d/b/a "LPE Bookstore," 07 Civ. 8028, is attached as Exhibit B. A copy of the order of Judge Koeltl in the action of Pearson Education, Inc., et al. v. Mushfiq Saleheen d/b/a "books777," 07 Civ. 4547, is attached as Exhibit C.

10. As the business site of Sharp Books, Abebooks probably knows the true identity and location of the individual or individuals using the name Sharp Books.


11. As a probable payment system used by Sharp Books, PayPal probably knows the true identity and location of the individual or individuals using the name Sharp Books.

12. As the e-mail provider used by Sharp Books, Google probably knows the true identity and location of the individual or individuals using the name Sharp Books.

13. Under Rule 26(d), however, "a party may not seek discovery from any source before the parties have conferred as required by Rule 26(f)." Without the identities and locations of the defendant, this conference would not be productive.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 11th day of August 2008 in New York, New York.

  
William Dunnegan

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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PEARSON EDUCATION, INC., :  
JOHN WILEY & SONS, INC., :  
CENGAGE LEARNING INC., AND :  
THE MCGRAW-HILL COMPANIES, INC., :

Plaintiffs, :

-against-

07 Civ. 6914 (GEL)  
ECF CASE

MANOHAR MARIMUTHU, SHRIHARI :  
SIVASUBRAMANIAM AND RAMKUMAR :  
CHANDRASEKARAN D/B/A RK SELLERS :  
AND JOHN DOE NOS. 1-5, :

Defendants. :

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ORDER ALLOWING SERVICE BY E-MAIL AND MAIL  
AND SERVICE OF SUBPOENAS TO ASCERTAIN THE  
IDENTITY AND LOCATION OF DEFENDANTS

Upon the application of plaintiffs Pearson Education, Inc., John Wiley & Sons, Inc., Cengage Learning Inc. and The McGraw-Hill Companies, Inc., as set forth in the annexed declaration of William Dunnegan, dated October 18, 2007, for an order (i) pursuant to Rule 4(e)(1) of the Federal Rules of Civil Procedure allowing service by e-mail and mail of the summons and complaint on defendant Ramkumar Chandrasekaran d/b/a RK Sellers in this action, and (ii) pursuant to Rule 26(d) of the Federal Rules of Civil Procedure allowing service of subpoenas on AbeBooks Inc. ("AbeBooks"), Google Inc. ("Google"), PayPal, Inc.

("AbeBooks"), Google Inc. ("Google"), PayPal, Inc. ("PayPal") and eBay, Inc. ("eBay") to ascertain the true identities and locations of defendants Ramkumar Chandrasekaran d/b/a RK Sellers and John Doe Nos. 1-5, and good cause for that relief appearing, it is hereby

ORDERED, pursuant to Rule 4(e)(1) of the Federal Rules of Civil Procedure, that plaintiff may serve the summons and complaint in this action upon defendant Ramkumar Chandrasekaran d/b/a RK Sellers by e-mailing a copy of each, along with a copy of this order, in .pdf format to the e-mail address seller.rk@gmail.com as well as mailing a copy of each, along with a copy of this order, to the defendant's last known address of 910 East Lemon Street, Apartment 21, Tempe, Arizona 85281 in a envelope bearing the legend "personal and confidential" and not indicating on the outside that the communication is from an attorney or concerns an action against the person to be served; and it is further

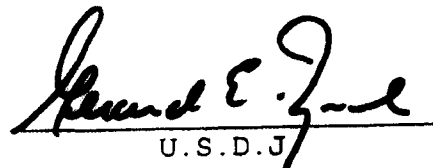
ORDERED that service shall be deemed complete upon the filing of a declaration with the Clerk of the Court affirming that the e-mail and mailing has been sent in conformity with this order; and it is further

ORDERED, pursuant to Rule 26(d) of the Federal Rules of Civil Procedure, that plaintiffs may serve subpoenas on AbeBooks, Google, PayPal and eBay to identify

and locate defendants Ramkumar Chandrasekaran d/b/a RK

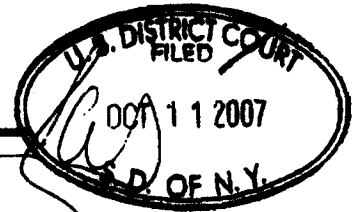
Sellers and John Does Nos. 1-5 in this action.

Dated: New York, New York  
October 22 2007

  
U.S.D.J.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DOC # 9



PEARSON EDUCATION, INC.,  
JOHN WILEY & SONS, INC.,  
CENGAGE LEARNING INC. AND  
THE MCGRAW-HILL COMPANIES, INC.,

Plaintiffs,

-against-

JOHN DOE D/B/A LPE BOOKSTORE  
D/B/A KBS AND JOHN DOES  
NOS. 1-5,

Defendants.

07 Civ. 8028 (CM)

ORDER ALLOWING SERVICE BY E-MAIL AND MAIL  
AND SERVICE OF SUBPOENAS TO ASCERTAIN THE  
IDENTITY AND LOCATION OF DEFENDANTS

Upon the application of plaintiffs Pearson Education, Inc., John Wiley & Sons, Inc., Cengage Learning Inc. and The McGraw-Hill Companies, Inc., as set forth in the annexed declaration of William Dunnegan, dated October 2, 2007, for an order (i) pursuant to Rule 4(e)(1) of the Federal Rules of Civil Procedure allowing service by e-mail and U.S. mail of the summons and complaint on defendant John Doe d/b/a LPE Bookstore d/b/a KBS in this action, and (ii) pursuant to Rule 26(d) of the Federal Rules of Civil Procedure allowing service of subpoenas on AbeBooks Inc. ("AbeBooks"), Google Inc. ("Google"), PayPal, Inc.

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("PayPal") and eBay, Inc. ("eBay") to ascertain the true identities and locations of defendants John Doe d/b/a LPE Bookstore d/b/a KBS and John Doe Nos. 1-5, and good cause for that relief appearing, it is hereby

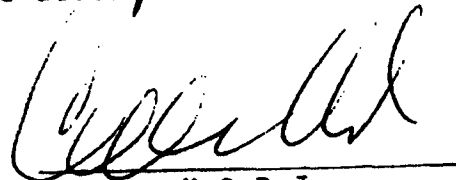
ORDERED, (pursuant to Rule 4(e)(1) of the Federal Rules of Civil Procedure, that plaintiffs may serve the summons and complaint in this action upon defendant John Doe d/b/a LPE Bookstore d/b/a KBS by e-mailing a copy of each, along with a copy of this order, in .pdf format to the e-mail address ~~Spencer~~ *lowprice.edition@gmail.com* as well as mailing a copy of each, along with a copy of this order, to the defendant's last known address of 1011 East Orange Street, #63, Tempe, Arizona 85281 in a envelope bearing the legend "personal and confidential" and not indicating on the outside that the communication is from an attorney or concerns an action against the person to be served; and it is further

ORDERED that (service shall be deemed complete upon the filing of a declaration with the Clerk of the Court affirming that the e-mail and mailing has been sent in conformity with this order); and it is further

ORDERED, pursuant to Rule 26(d) of the Federal Rules of Civil Procedure, that (plaintiffs may serve subpoenas on AbeBooks, Google, PayPal and eBay to identify

and locate defendants John Doe d/b/a LPE Bookstore d/b/a  
KBS and John Does Nos. 1-5 in this action).

Dated: New York, New York  
October 10, 2007

  
U.S.D.J.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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PEARSON EDUCATION, INC., :  
JOHN WILEY & SONS, INC., :  
THOMSON LEARNING INC., AND :  
THE MCGRAW-HILL COMPANIES, INC., :

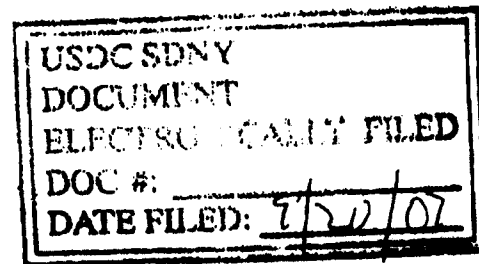
Plaintiffs,

-against-

MUSHFIQ SALEHEEN D/B/A BOOKS777 :  
D/B/A BOOKDEALS777 D/B/A :  
BOOKS11111 D/B/A SHUVO123456 :  
D/B/A BOOKS22222 and JOHN DOE :  
NOS. 1-5, :

Defendants.

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07 Civ. 4547 (JGK)

ORDER ALLOWING SERVICE BY E-MAIL AND SERVICE  
OF A SUBPOENA TO ASCERTAIN THE IDENTITY  
AND LOCATION OF DEFENDANTS

Upon the application of plaintiffs Pearson Education, Inc., John Wiley & Sons, Inc., Thomas Learning Inc. and The McGraw-Hill Companies, Inc., as set forth in the annexed declaration of William Dunnegan, dated August 2, 2007, for an order (i) pursuant to Rule 4(e)(1) of the Federal Rules of Civil Procedure allowing service by e-mail of the summons and complaint on defendant Mushfiq Saleheen in this action, and (ii) pursuant to Rule 26(d) of the Federal Rules of Civil Procedure allowing service of a subpoena on the Georgia Institute of Technology to

ascertain the true identities and locations of defendants Mushfiq Saleheen and John Doe Nos. 1-5, and good cause for that relief appearing, it is hereby

ORDERED, pursuant to Rule 4(e)(1) of the Federal Rules of Civil Procedure, that plaintiff may serve the summons and complaint in this action upon defendant Mushfiq Saleheen by e-mailing a copy of each, along with a copy of this order, in .pdf format to the e-mail addresses books777@gmail.com,

books111@gmail.com and bookdeal777@gmail.com; and it is

further

ORDERED that service shall be deemed complete

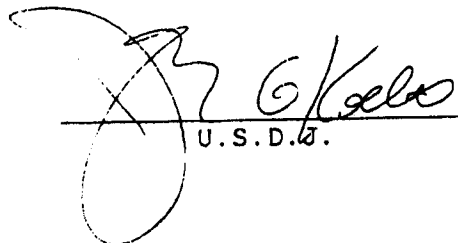
upon the filing of a declaration with the Clerk of the Court affirming that the e-mail has been sent in conformity with this order; and it is further

ORDERED, pursuant to Rule 26(d) of the Federal

Rules of Civil Procedure, that plaintiffs may serve a subpoena on the Georgia Institute of Technology to identify and locate defendants Mushfiq Saleheen and John Does Nos. 1-5 in this action.

Dated: New York, New York  
~~August~~ \_\_, 2007

September 20,

  
U.S.D.J.